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NO. 82-5922

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

WILLIE ALBERT SMITH,
Petitioner

VS.

STATE OF MISSISSIPPI
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF MISSISSIPPI

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. WHERE PETITIONER HAS IGNORED THE ORDER OF THIS COURT TO TIMELY FILE HIS PETITION AND HE FAILS TO DO SO, SHOULD THIS COURT CONSIDER THE MERITS OF THIS PETITION?

II. WHERE THE QUESTION OF COUNSEL'S EFFECTIVENESS AND THE TEST FOR DETERMINATION OF EFFECTIVENESS HAS NEVER BEEN PRESENTED TO THE COURT BELOW CAN IT BE GROUNDS FOR REVIEW HERE?

III. WHERE POLICE MAKE A WARRANTLESS ENTRY UNDER EXIGENT CIRCUMSTANCES IN AN EFFORT TO LOCATE AND POSSIBLY SAVE THE LIFE OF A VICTIM OF ROBBERY AND ABDUCTION, LEAVE THE DWELLING FOR A SHORT TIME, LOCATE THE DEAD VICTIM, CAN THEY RE-ENTER THE DWELLING TO SEIZE ITEMS RELATED TO THE CRIME THEY HAD OBSERVED IN PLAIN-VIEW ON THEIR INITIAL ENTRY WITHOUT EXTENDING THE SEARCH FURTHER.

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BRIEF IN OPPOSITION

Respondents, State of Mississippi, respectfully prays that the petition for writ of certiorari to the Supreme Court of Mississippi be denied in this case.

OPINION BELOW

The opinion of the Supreme Court of Mississippi is reported as Willie Albert Smith v. State of Mississippi, 419 So.2d 563 (Miss.1982). The original opinion was modified and rehearing was denied on September 22, 1982. A copy of the opinion is before this Court as an Appendix A to the Petition for Writ of Certiorari.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court by way of a Petition for Writ of Certiorari through the authority of 28 U.S.C. 1257(3).

STATEMENT OF THE CASE

Petitioner, Willie Albert Smith, was indicted for the crime of capital murder by the Grand Jury for the First Judicial District of Hinds County, Mississippi during the March 1981 Term. The indictment grew out of the March 15, 1981 abduction, robbery and murder of Shirley Roberts.

Petitioner was tried on the indictment beginning on July 27, 1981. Petitioner's bifurcated trial was conducted under the procedures mandated in Section 99-19-101 to 107, Miss. Code Ann. (Supp.1977) and the Mississippi Supreme Court in Jackson v. State, 337 So.2d 1242 (Miss.1976). At the conclusion of the guilt phase of the two stage trial, the jury after proper instructions, retired to consider their verdict. After deliberation the jury returned a verdict of guilty of capital murder. The trial then proceeded into the punishment or sentencing phase. After hearing additional evidence and being properly instructed the jury again retired, this time to consider sentence. The jury returned a sentence of death in proper form finding the existence of three aggravating circumstances.

An automatic review by the Mississippi Supreme Court of the conviction and sentence of death was affirmed by a unanimous court on August 11, 1982. Smith v. State, 419 So.2d 563 (Miss. 1982). A petition for rehearing was filed by petitioner and on September 22, 1982 the court modified its opinion and denied rehearing.

Included in the petition for rehearing was a motion for stay of execution pending the filing and disposition of a petition for writ of certiorari in the event the rehearing was denied. This motion was denied for reason of non-compliance with Rule 45, Miss. Sup.Ct. Rules. Application for stay of the September 29, 1982 execution date was then made to this Court. This motion was granted on September 27, 1982 pending the timely filing of the petition. Which was not done.

The facts, as reflected in the record, show that Shirley Roberts arrived at the Tote-Sum Store No. 6 where she was manager about 5:15 a.m. on March 15, 1981 to open the store. Two people, Kenneth Thomas and James Wells, in a passing car saw petitioner grab Mrs. Roberts who struggled with him. The two men, not wanting to get involved, drove on. They had a change of heart and returned to the scene a few minutes later there finding Jackson Police Department Officer, G.E. Otis present. They told Otis what they had seen only moments earlier. Officer Otis conducted a brief search of the parking area and found: a set of car keys, brass knuckles, a twenty-dollar bill, a woman's tennis shoe and a pair of eyeglasses. Thomas testified that Mrs. Roberts was unlocking the store when she was grabbed.

Officer Otis determined that one of the cars in the parking lot belonged to Mrs. Roberts and that she was no where on the premises. Otis then saw a red Pinto approach the Tote-Sum Store, make a u-turn and leave the scene. The Pinto fit the description of the suspect's car given by Thomas and Wells. Otis pursued and stopped the vehicle which was being driven by petitioner. Otis saw petitioner put something under the right front seat while in the process of stopping the petitioner. Petitioner got out of the car and began acting in a beliigerent way. Upon investigation Otis discovered it was the mate to the shoe found in the parking lot. There was mud and blood on petitioner's hands. Upon this information petitioner was arrested.

The petitioner told Otis he borrowed the red Pinto from Edward Charles McDonald and directed Otis and Officer Grice, who had arrived on the scene, to McDonald's address. McDonald then took the officers to petitioner's house.

Officer Grice joined by an Officer Roebuck entered petitioner's house in search of Mrs. Roberts. They observed several articles including women's clothing but did not stop to seize them in their frantic search for Mrs. Roberts. They exited the house and begin searching outside. They find and follow a "drag trail" from the house to a wooded area where they came to a ditch of water covered with leaves. A human foot is protruding from the water. The body of Mrs. Roberts is recovered. The police return to the house and seize those items they had observed on the initial entry into the house. Photographs were also taken at this time.

REASONS FOR DENYING THE WRIT

Petitioner blatantly ignored the order of this Court to timely file his petition for writ of certiorari. He filed it a month late. The failure to obey the order of this Court is grounds for dismissal of the petition without more.

If the Court decides to consider the petition there is no merit as petitioner attempts to raise two issues that were never presented to the court below and only one issue that was fully litigated below. He freely admits that he has not raised the two questions presented here dealing with the effectiveness of counsel in the section of his petition entitled "How The Federal Quesions Were Raised And Presented Below." (Petition at 7) This being the case this Ccurt has no jurisdiction to decide those issues. Those issues properly raised and decided below present no questions of substance as they involve no denial of rights guaranteed by the Constitution of the United States, Amendment Four.

A.

Preliminary to addressing the merits of this petition the respondents would contend that this Court has no jurisdiction to hear this petition as petitioner failed to follow the direct order of this Court by filing his petition for writ of certiorari a month late.

On August 11, 1982 the Mississippi Supreme Court affirmed the conviction and death sentence imposed on petitioner. September 29, 1982 was fixed as the date of execution of the sentence. On August 26, 1982 petitioner filed a petition for rehearing and application for stay of execution pending the filing of a petition for writ of certiorari with this Court. The application for stay was to be effective if rehearing was denied. On September 22, 1982 the original opinion of the court was modified,

the petition for rehearing was denied and the stay of execution was denied as there was no compliance with Rule 48, Miss. Sup. Ct. Rules. [There was no showing that a petition for writ of certiorari had been filed with this Court.]

Petitioner immediately applied to this Court for a stay of execution pending the filing and disposition of a petition for writ of certiorari. Justice White granted the stay on September 27, 1982. The order read:

> UPON CONSIDERATION of the application of counsel for the petitioner,
>
> IT IS ORDERED that the execution and enforcement of the sentence of death imposed upon the petitioner and scheduled for September 29, 1982, be, and the same is hereby, stayed pending the timely filing and disposition by this Court of a petition for a writ of certiorari. Should the petition for a writ of certiorari be denied, this stay terminates automatically. In the event the petition for a writ of certiorari is granted, this stay shall continue pending the issuance of the mandate of this Court.

(Emphasis added)

With the final order being entered on September 22, 1982 petitioner's filing date was November 21, 1982. Rule 20, Rules of the Supreme Court of the United States. Petitioner requested no extension of time. He filed his petition on December 20, 1982. Therefore, the petition here presented was not timely filed in direct contravention of the order of this Court. In compliance with Rule 22.3, Rules S.Ct. U.S., respondent now objects to the jurisdiction of this Court to consider this petition as it was not timely filed in direct contravention of the order of this Court.

B.

Petitioner raises, for the first time, the allegation that he was denied effective assistance of counsel. This issue was presented to the court below for determination. Under the

rational of Cardinale v. Louisiana, 394 U. S. 437 (1969), this Court lacks jurisdiction to decide this issue as it was never presented to the State courts.

Petitioner attempts to rely on an off-hand comment in the opinion of the court below as a determination on the merits of this never raised claim. In the concluding paragraph of the opinion the court below stated:

> At the trial the defendant was ably defended by astute counsel retained by his family.
>
> 419 So.2d at 574.

This gratuitous comment by the court in no way determined the issue of trial counsel's competence. There was nothing for the court to determine as there was no claim of ineffectiveness before the court.

The only substantive claim petitioner makes deals with an offer by counsel to allow his law student son to do part of the closing argument. This did not occur so there can be no ground for complaint.

C.

Petitioner's second question deals with the test used in Mississippi to determine adequacy of counsel. As above this was not presented to the State courts and is barred from consideration here. However, he makes the incorrect claim that the "farce and mockery test" is maintained in this jurisdiction as the test for competency. The age of the authority he relies upon shows the reason for his mistaken viewpoint. In Stewart v. State, 229 So.2d 53 (Miss.1969), the Mississippi Court adopted the test set forth in MacKenna v. Ellis, 280 F.2d 592 (5th Cir.1960), that being "counsel reasonably likely to render and rendering reasonably effective assistance in the case of appointed counsel.

The Mississippi court also has used an "offensive to the common and fundamental ideas of fairness and right" test. Edwards v. State, 413 So.2d 1007 (Miss.1977); Hutchinson v. State, 391 So.2d 637 (Miss.1980). The "mockery of justice" test was also used at one time in dealing with retained counsel. Parham v. State, 229 So.2d 582 (Miss.1969). However, the question has now been fully answered by the court below. In Samuel Callahan, et al v. State of Mississippi, Miss. Sup. Ct. Misc. No. 1445 (decided February 16, 1983), not yet reported),[1] the Court stated:

> In Mackenna v. Ellis, 280 F.2d 592 (5th Cir. 1960), the federal court employed for the first time the test of "counsel reasonably likely to render and rendering reasonably effective assistance." Id. at 599. This test is now used regardless of whether counsel is appointed or retained. Cuyler v. Stullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).
>
> Slip opinion at 6.

The court then goes on to apply this test to a retained counsel situation. Petitioner has selectively presented Mississippi law and done so incorrectly. This Court has no jurisdiction to hear this admittedly meritless claim.

D.

The only issue presented below and properly before this Court in this petition for writ of certiorari is the question concerning the search of appellant's house. This issue presents no substantial federal question that would justify the court invoking its discretionary jurisdiction by granting certiorari.

Petitioner does not challenge the initial entry and cursory search of his apartment conducted pursuant to the existence of circumstances recognized as constituting an emergency exception to the warrant requirement of the Fourth Amendment. His

complaint here is the second entry and seizure of items relating to the crime that were observed in plain view during the initial entry. The second entry was made after the termination of the emergency. Petitioner relies on Mincey v. Arizona, 437 U.S. 385 (1977) as a basis for his claim of constitutional violation.

The factual context of the search and seizure are of greatest importance in this case. The case at bar is clearly distinguishable from the factual setting in Mincey, supra. as is pointed out by the court below. We do not have a four day rug ripping search here. The court below did an exhaustive review of the facts and the law concerning the original entry, the re-entry and the seizure of the items observed in plain view upon the first entry.

A brief review of the facts of the case at bar and the law in such cases should be sufficient to convince the Court of the lack of merit in petitioner's argument.

Sergeant J. E. Otis stopped the automobile driven by appellant at approximately 6:15 a.m. on March 15, 1981. (R. 135) Both the vehicle and its driver met those descriptions of each which had been given the officer by the witnesses to the struggle between the victim and her abductor. (R. 132-133, 670-671). Observing the apparent mate to the victim's shoe partially protruding from beneath the passenger's seat (R. 138, 637), the appellant was placed under arrest at approximately 6:20 a.m. (R. 154) In the process of arresting appellant, Sergeant Otis further observed mud on appellant's fingers and what appeared to be blood on the palms of his hands. (R. 138, 677) Informed that he was under arrest for kidnapping and possible robbery, appellant directed the officers to the home of Charles McDonald, the owner of the automobile. (R. 726) Accompanied by Officers Terry Grice, Steve Roebuck and James Howard, they

arrived at McDonald's residence at approximately 6:30 and remained there for about ten minutes. (R. 170-171) Riding with Officer Howard, Charles McDonald directed the officers to appellant's residence at 109 Keystone Court (R. 794), where they arrived at approximately 6:45 a.m. (R. 171) Keystone Court was actually a small alleyway and was blocked by parked cars. It was therefore necessary for the police vehicles to park on Henley Street a short distance from appellant's residence. (R. 145) Accompanying Officer Grice, Roebuck and Howard, McDonald indicated the apartment where appellant lived. (R. 172) Officer Grice and Roebuck were the first to enter the dwelling. (R. 182) The purpose of such entry not to obtain evidence but to locate the victim, Mrs. Shirley Roberts. (R. 181) Officer Howard also entered the apartment. (R. 814) Mr. McDonald followed the officers into the house. (R. 582) Entering by way of the front porch--there being no door but merely an open doorframe--they walked down what appeared to be a common hallway. (R. 187) The second door on the left was open and those items which were observed by the officers and subsequently recovered were visible and in plain view from the hallway. (R. 176, 187) A white sweater, a brown canvas purse, a wallet and a pair of light brown or khaki pants were laying on the bed. A pair of men's shoes were on the floor beside the bed, a pair of dark brown pants were also on the floor, as was a padlock with a key in it. (R. 174-175, 181, 796-802) The officers entered the room and continued to look for the victim. (R. 173) They did not conduct a detailed search of the residence nor did they stop to collect any evidence. (R. 174) They did not open drawers or disturb anything but just looked anywhere the victim could have possibly been found, such as under the bed or in the closet. (R. 176)

Noting that the mud upon the men's shoes appeared to be still fresh, Officer Grice went outside and around the house were he observed fresh footprints leading towards the woods behind the house. He was then joined by Officer Roebuck and walked in that direction looking for the victim. (R. 173) Not far from the rear of the house, a trail which appeared to have been made by something having dragged along the ground began. (R. 173) Following this trial to a water-filled ditch 40 to 50 yards away, they found the body of the victim. (R. 174) The time was approximately 7:12 a.m. (R. 813) After discovery of the body Officer Grice informed the Mobile Crime Lab of those items which had been seen in the apartment. (R. 185, 829)

During the initial entry the officers had been in the apartment for about four minutes. (R. 827) Mr. McDonald had been told to come out of the apartment and remained outside with one officer while the others followed the trail into the woods. (R. 855) He estimated that they had been in the apartment about five minutes and that the officers found the body ten minutes after they went outside. (R. 856)

Officer Walter Welch, an evidence technician with the Mobile Crime Lab, arrived at the appellant's apartment at approximately 7:20 a.m. (R. 189) Entering the apartment, he photographed the objects as situated when found prior to his removal of the same. (R. 917, 925, 954) Detectives Patton, Fondren, and Adams were already in the apartment when Officer Welch arrived and pointed out to him the items which he recovered therefrom. (R. 194)

Those items seized by Officer Welch were as follows:

(1) One white sweater (State's Exhibit 17; R. 918);

(2) One pair of light brown or khaki pants (State's Exhibit 21; R. 924);

(3) One pair of men's shoes (State's Exhibit 19; R. 927);

(4) One padlock with key (State's Exhibit 18, R. 920);

(5) One brown canvas purse containing the Social Security Card of Shirley L. Roberts and the Master Charge Card for Charles S. Roberts (State's Exhibit 16; R. 921);

(6) One wallet (State's Exhibit 22; R. 925);

(7) One pair of dark brown pants (State's Exhibit 20; R. 922);

(8) One $100 bill as recovered from the aforesaid khaki pants (State's Exhibit 39; R. 930); and

(9) Bedsheets and brown flowered shirt (State's Exhibit 47; R. 1008-1009).

Although the court below, of necessity, considered the legality of the initial entry it was not an issue below nor is it questioned here. The only issue being the re-entry and seizure of the above listed items.

After finding the initial intrusion into the apartment was justified the court below correctly came to the following conclusions concerning the re-entry and seizure. The Court stated:

> Consideration of the search of the defendant's apartment and the subsequent seizure of the articles in question does not stop with the justification for the initial entry and a discussion of whether a seizure of the incriminating objects at that time would have been lawful. Officers Grice and Roebuck left the house after satisfying themselves that Mrs. Roberts was not in the house. They then proceeded to search the area immediately surrounding the house where they discovered Mrs. Roberts' body. Defense counsel contends that at this point the exigent circumstance lapsed and any subsequent re-entry into the house required a warrant. A proper analysis of

Coolidge and the underlying basis for the justification of "plain view" seizures reveals the fallacy in this contention. What if the police, upon their lawful entry into the defendant's apartment, and after seeing the various articles of clothing, etc. lying in plain view upon the bed and the floor, and recognizing them for their evidentiary value, had stopped to gather them up, log their positions in the room, and otherwise insure that their evidentiary value was preserved? Such actions on the part of the police officers might have cast grave and possibly fatal doubts upon the validity of the exigent circumstances justifying their initial entry. See Root v. Gauper, 438 F.2d 361 (8th Cir. 1971). A careful analysis of the actions of the officers upon reaching the scene of the "emergency" is vital to insure that the emergency doctrine exception to the requirement of a warrant does not escape its bounds and engulf the general rule. In the instant case, any actions on the part of the police officers other than those which clearly reflected their belief that Mrs. Roberts was in the vicinity, either in the house or immediately outside it, would have tended to cast doubts upon the validity of their search.

Viewed from this perspective, the conundrum of the emergency doctrine exception becomes apparent. If the officers stopped to seize the evidence in plain view, their initial search is invalidated since their actions would not have been consistent with the existence of an emergency. If they continue to search for the victim, so that the object is no longer in plain view, they may not return and seize the incriminating objects without first obtaining a search warrant. The solution to this dilemma must follow one's viewing the totality of the circumstances surrounding the initial entry, the officers of the Jackson Police Department were engaged in only one search. That search had only one goal; locating Mrs. Roberts (and assisting her, if not too late). The actions of Officer Welch and the other members of the mobile crime lab (after the re-entry of the apartment) were merely to effectuate the physical seizure of articles in plain view which Officers Grice and Roebuck would have been able to seize had not the circumstances been so "exigent". There was no unwarranted delay in time, nor was there any expansion of the scope of the search. The fact that the actual physical taking of the items into the custody of the police was effectuated by evidence technician who was trained to preserve the evidentiary value of the objects, rather than by the first officers to view the objects, is not significant.

The state cites the case of La Fournier v. State, 91 Wis.2d 61, 280 N.W.2d 746 (1979), which dealt with the validity of a warrantless rearch and seizure of evidence following an initial entry into the defendant's place of residence. In that case, the first officer who entered the residence did so without a warrant under the "emergency rule." He observed "plain view" incriminating evidence and called for assistance much as happended in the instant case. He called for other officers to "secure the scene" and left. Three other officers came within about fifteen minutes and entered the defendant's premises. Evidence seized during this alleged "second entry" was sought to be suppressed. The Wisconsin Supreme Court upheld the last entry and seizure of evidence, and stated:

> The three officers did not more than Weiland would have been justified in doing had he remained on the premises. They entered the same area of the house in which Weiland had found the drug victim and in which the contraband was discovered in plain view. These officers were called as backup; they were completing that which was lawful under the first entry, securing evidence in plain view. They did not expand the scope or nature of the original entry. Their purpose was limited to the evidence Weiland had found in plain view. That evidence and La Fournier's statement that he had just shot up provided the officers with probable cause for La Fournier's arrest and the custodial search which brought to light the heroin.
>
> Whether a subsequent entry is detached from an initial exigency and warrantless entry or is a continuation of the lawful initial entry can be determined only in light of the facts and circumstances of each case. We conclude that in the instant case the successive intrusions of Weiland and the three officers were close in time and practically identical in nature so as to be analytically and factually inseparable. The entry of the three officers must be regarded as a continuation of Weiland's initial legal entry. No warrant was needed.

Id. at 69-70, 280 N.W.2d at 750-51.

(Footnotes omitted) 419 So.2d 571-573.

The Court went on to discuss the case of Norman v. State, 302 So.2d 254 (Miss.1974), where a warrantless search incident to arrest was interrupted by the discovery of a bomb in the house. The state court concluded stating:

> In the instant case, the justification for the initial search differs from Norman, (emergency circumstances versus a search incident to an arrest), but in both situations the officers' presence within the dwelling had a prior legal justification. The original search in the present case was not completed due to the overriding importance of first locating Mrs. Roberts. After the officers first exited defendant Smith's apartment, Jackson police officers continually maintained the status quo around the residence. There was no unreasonable lapse of time between the initial viewing of the incriminating objects and the subsequent physical seizure. Finally, the entry of the house by the members of the mobile crime lab merely constituted a continuation of the original search. The only objects seized were those in plain view (or contained iwthin them) and the only room searched was the one room in which they were seen.
>
> Accordingly, we conclude that the original entry of Officers Grice and Roebuck appears justified under the emergency doctrine exception to the requirement of a warrant for the entry and search of a dwelling. Once in Smith's apartment, they were authorized to seize incriminating objects coming into plain view. The fact that they did not do so at the time is merely evidence of the exigency of the particular circumstances. The second entry into Smith's apartment by members of the mobile crime lab constituted a continuation of the original search. Therefore, the decision of the trial court to overrule the appellant's motion to suppress those items of evidence recovered as a result of the search of Smith's apartment was not error.
>
> (Emphasis added) 419 So.2d at 573-574.

It is clear from the facts in this case that the police entered legally under the exigent circumstance of attempting to preserve life. The officers could see into the bedroom searched from the common hall as the door to petitioner's apartment was open. The police entered the room looked in closets and under the bed. While searching for Mrs. Roberts they observed the items later seized in plain view. The officers left the apartment, still in search of Mrs. Roberts, telling McDonald [the person who led the police to the apartment] to wait outside with an officer. This precaution was certainly taken to preserve the

scene of a possible murder. The police were in the apartment for four to five minutes. The search for Mrs. Roberts continued outside the house and her body was found some twenty-two minutes later forty to fifty yards from the apartment partially submerged in a water filled ditch. Some eight minutes later the mobile crime lab arrived and entered the apartment the second time. They photographed the bedroom and seized those items observed in plain view by the first officers. They opened no drawers, tore up no carpet, removed no item that was not noted by the officers on their initial entry and they completed this operation within thirty-five minutes. This was not the "exhaustive and intrusive" four day search condemned in Mincey, supra.

The holding of the Mississippi Supreme Court is fully supported by the holdings in Michigan v. Tyler, 436 U.S. 499 (1978), Satchell v. Cardwell, 653 F.2d 400 (9th Cir. 1981); cert. den. ___ U.S. ___, 102 S.Ct. 412, 71 L.Ed. 311 (1982); United States v. Brand, 556 F.2d 1312 (5th Cir. 1977), reh. den, 561 F.2d 831, cert. den. 434 U.S. 1063 (1978); Wooten v. State, 398 So.2d 963 (Fla.1981); Commonwealth v. Young, 377 Mass. 688, 416 N.E. 2d 944 (1981); State v. Mata, 125 Ariz. 233, 609 P.2d 48 (1980), cert. denied. 449 U.S. 938 (1981); LaFournier v. State, 91 Wis. 2d 61, 280 N.W.2d 746 (1979); State v. Martin, 274 N.W. 2d 893 (S.D. 1979), cert. den. 444 U.S. 882 (1979); Crum v. State, 349 So.2d 1059 (Miss.1977); Voss v. State, 198 Tenn 135, 278 S.W. 2d 2d 667 (1955), cert. den. 348 U.S. 965 (1955).

The court below correctly held that the subsequent entry and limited seizure comported with the constitutional gurantees of the Fourth Amendment. Petitioner has presented no argument sufficient to show that this Court should grant certiorari on this question.

CONCLUSION

For the reasons stated above the Petition For A Writ Of Certiorari To The Supreme Court Of Mississippi should be denied.

Respectfully submitted,

BILL ALLAIN, ATTORNEY GENERAL

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CERTIFICATE

I, Marvin L. White, Jr., Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, postage prepaid, a copy of the above and foregoing Brief In Opposition To Petition For Writ Of Certiorari to David M. Cowin, Esquire, 140 Henry Street, Brooklyn, New York 11201.

This, the 18th day of February, A.D., 1983.

Marvin L. White, Jr.
SPECIAL ASSISTANT ATTORNEY GENERAL